

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlmais Johnson	Team: Team # 5	CCRB Case #: 200702604	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/17/2007 4:34 PM	Location of Incident: § 87(2)(b) en route to 52nd Precinct stationhouse, 52nd Precinct stationhouse		Precinct: 52	18 Mo. SOL 7/17/2008	EO SOL 7/17/2008
Date/Time CV Reported Thu, 02/22/2007 5:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 02/22/2007 5:57 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
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Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Diaz	25216	925194	052 PCT
2. POM Erick Acevedo	12656	901082	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jason Liles	03502	917881	052 PCT
2. SGT Philip Hernandez	03737	914812	052 PCT
3. POM Aniello Mazzella	18721	920573	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Erick Acevedo	Force: At § 87(2)(b) in the Bronx, Officer Erick Acevedo pointed his gun at § 87(2)(b)	§ 87(2)(b)
B.POM Erick Acevedo	Abuse: At § 87(2)(b) in the Bronx, Officer Erick Acevedo threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
C.POM Erick Acevedo	Abuse: Officer Erick Acevedo entered and searched § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)
D.POM Jose Diaz	Abuse: Officer Jose Diaz entered and searched § 87(2)(b) § 87(2)(b) in the Bronx.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
E.POM Erick Acevedo	Abuse: En route to the 52nd Precinct stationhouse, Officer Erick Acevedo threatened § 87(2)(b) with the use of force.	
F.POM Erick Acevedo	Force: At the 52nd Precinct stationhouse, Officer Erick Acevedo used physical force against § 87(2)(b)	
G.POM Erick Acevedo	Abuse: At the 52nd Precinct stationhouse, Officer Erick Acevedo threatened § 87(2)(b) with the use of force.	
H.POM Erick Acevedo	Force: At the 52nd Precinct stationhouse, Officer Erick Acevedo used physical force against § 87(2)(b)	
I.POM Erick Acevedo	Discourtesy: At the 52nd Precinct stationhouse, Officer Erick Acevedo spoke obscenely and/or rudely to § 87(2)(b)	

Synopsis

On January 17, 2007, at approximately 4:34 p.m., 52nd Precinct Domestic Violence Officers Officer Erick Acevedo and Officer Jose Diaz went to § 87(2)(b) in the Bronx, to conduct a home visit at the home of a victim on the precinct's domestic violence high propensity list. When the officers knocked on the door, they were met by § 87(2)(b) the boyfriend of the victim, who had an order of protection barring him from the residence. § 87(2)(b) alleged that Officer Acevedo pointed a gun at him through the door (Allegation A) and threatened to shoot him (Allegation B). Officer Acevedo and Officer Diaz forcibly entered the apartment, causing damage to the door (Allegation C and Allegation D), and arrested § 87(2)(b) claimed that as he was being transported to the 52nd Precinct stationhouse, Officer Acevedo again threatened to shoot him (Allegation E). At the 52nd Precinct stationhouse, § 87(2)(b) was taken into a bathroom to be searched. § 87(2)(b) claimed that Officer Acevedo used physical force against him (Allegation F) and threatened to beat him with the handcuffs (Allegation G). § 87(2)(b) stated that he later refused to exit a holding cell to be fingerprinted, prompting Officer Acevedo to use physical force against him (Allegation H) and refer to him as a "bitch" (Allegation I).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) year old unemployed male, filed a complaint via the CCRB call-processing system on February 22, 2007 (encl. 3A-3C). § 87(2)(b) provided a brief telephone statement on February 23, 2007 (encl. 4A-4B) and a sworn statement on February 26, 2007 (encl. 5A-5G). § 87(2)(b) initial and telephone statements were similar to his sworn statement, as summarized below, with exceptions noted.

Because § 87(2)(b) had previously pleaded guilty to domestic violence assault against his girlfriend, there was a five-year order of protection preventing him from going to § 87(2)(b) in the Bronx, the residence of his girlfriend. However, on January 16, 2007, § 87(2)(b) girlfriend asked him to watch their children at the apartment while she went to the hospital for medical treatment. § 87(2)(b) agreed and was inside of the apartment from January 16, 2007 at 10:00 p.m. to January 17, 2007, at approximately 4:34 p.m.

On January 17, 2007, at approximately 4:34 p.m., § 87(2)(b) was inside of § 87(2)(b) when Officer Erick Acevedo and Officer Jose Diaz knocked on the door and said that they were there to check on the children. § 87(2)(b) identified Officer Acevedo, whom he described as a heavy-set Hispanic male, approximately 5'5" in height with glasses, and Officer Diaz, whom he described as a Hispanic male, by name and indicated that he knew the officers' names from a prior arrest on December 6, 2006. When § 87(2)(b) identified himself as the officers requested, the officers demanded that he open the door. § 87(2)(b) told the officers that his girlfriend was not at home and asked them to return when she was. The officers knocked again and asked him to open the door. When § 87(2)(b) refused to open the door and directed them to leave a business card, the officers told him, "No, we're gonna break the door down." § 87(2)(b) stated that Officer Acevedo asked him to look through the peephole of the door. When § 87(2)(b) complied, he saw Officer Acevedo pointing a gun at the door. Officer Acevedo told him, "If you don't open the door, we're gonna shoot through the door." § 87(2)(b) who stated that he did not trust the officers, moved away from the door. Officer Acevedo and Officer Diaz banged on the door with their nightsticks. § 87(2)(b) claimed that the officers' actions caused damage to the door, specifically that the top corner of the door is bent from where the officers placed their nightsticks inside and attempted to pry the door open. § 87(2)(b) called 911 and informed the operator that he would not open the door until a

sergeant arrived. § 87(2)(b) indicated that the children were crying because the officers were banging on the door.

Approximately two minutes later, a sergeant responded to the location. § 87(2)(b) described the sergeant as a short Hispanic male with dark-colored hair and a moustache. This officer has been identified via investigation as Sergeant Philip Hernandez. § 87(2)(b) claimed that Sergeant Hernandez knocked the door down. § 87(2)(b) later indicated that his children began to cry when the officers knocked down the door and denied that they had been crying before this point. In his initial statement, § 87(2)(b) alleged that the officers pointed their guns at the children. In his telephone statement, § 87(2)(b) added further detail to this allegation and stated that the officers that entered the apartment told him, “Drop the phone or we’re going shoot.” § 87(2)(b) was handcuffed and placed under arrest.

Officer Acevedo and Officer Diaz transported § 87(2)(b) to the 52nd Precinct stationhouse while Sergeant Hernandez and approximately four male officers in plainclothes remained at the apartment with the children. § 87(2)(b) stated that during the drive back to the stationhouse, Officer Acevedo and Officer Diaz showed him their badges and told him, “If you’re gonna get a lawsuit, don’t forget my name.” Officer Acevedo told § 87(2)(b) that he would have shot § 87(2)(b) if he had opened the door and justified it by saying that § 87(2)(b) should not have been at the location. In his initial statement, § 87(2)(b) also claimed that while en route to the stationhouse, Officer Acevedo threatened to kill him if he saw § 87(2)(b) on the street.

Towards the conclusion of his sworn statement, § 87(2)(b) made the following allegations: When he was first brought to the stationhouse and was standing in front of the desk, he repeatedly asked Officer Acevedo why he was pulling on his handcuffs. Officer Acevedo told § 87(2)(b) to be quiet but § 87(2)(b) refused to do so. Because he was making too much noise, § 87(2)(b) was taken into a bathroom by Officer Acevedo and Officer Diaz. Inside the bathroom, Officer Acevedo pushed § 87(2)(b) against a wall and used one hand against his neck to choke him. § 87(2)(b) did not indicate that this action caused his breathing to be restricted. As he did so, Officer Acevedo said, “Don’t make me beat you with the handcuffs.” § 87(2)(b) later reported that Officer Acevedo said, “If I have to tell you to shut up again, I’m gonna beat you. I’m gonna really hurt you with these handcuffs.” Afterwards, § 87(2)(b) was placed into a holding cell. § 87(2)(b) made no mention of these allegations in his initial and telephone statements.

At approximately 7:00 p.m., Officer Diaz came into the cell area so that § 87(2)(b) could be fingerprinted. § 87(2)(b) told Officer Diaz that he did not wish to be fingerprinted at that moment because he was upset that the officers would not give him a telephone call. Officer Diaz, who never attempted to remove § 87(2)(b) from the cell, left the cell area but returned shortly with Officer Acevedo. Officer Acevedo asked § 87(2)(b) if he would comply with being fingerprinted but § 87(2)(b) refused and told Officer Acevedo to return at a later time. Officer Acevedo commanded, “Step out of the cell” and after some initial hesitation, § 87(2)(b) complied. § 87(2)(b) denied that he initiated any physical contact with any officer. Officer Acevedo, who was standing behind him, used one hand to choke him. In his telephone statement, § 87(2)(b) stated that this action caused his breathing to be restricted. However, § 87(2)(b) did not indicate that his breathing was restricted in his sworn statement. As he did this, Officer Acevedo asked him, “You gonna make me do this again?” Officer Acevedo then tightly handcuffed § 87(2)(b) and returned him to the holding cell, saying, “Let me know, you little bitch. Let me know when you’re ready for the handcuffs to come off.”

After thirty minutes, § 87(2)(b) could no longer stand to have the handcuffs on his wrists anymore and noted that his wrists were swollen. Unidentified prisoners, who numbered between ten and fifteen, commented that they thought that Officer Acevedo’s actions were wrong. § 87(2)(b) repeatedly called out for Officer Acevedo and Officer Acevedo returned and said, “So you finally bitched out? You ready? You ready to do the fingerprinting?” § 87(2)(b) agreed to submit to the fingerprinting in order to have the handcuffs removed. Officer Acevedo guided § 87(2)(b) to the fingerprinting machine. Officer Acevedo removed § 87(2)(b) left wrist from the handcuffs. Because he was not wearing a belt and his pants were baggy, it was necessary for § 87(2)(b) to hold his pants to prevent them from falling down. Officer Acevedo told § 87(2)(b) to place his hands behind his back. § 87(2)(b) complied but continued to hold his pants up. When the right handcuff was removed, § 87(2)(b) tried to use his right hand to hold his pants up.

§ 87(2)(b) alleged that Officer Acevedo took his left hand and bent it up towards his shoulder and told him that he had directed him to keep his hands behind his back. In his telephone statement, § 87(2)(b) made no mention of being left inside of the cell while handcuffed or that he had any problem with his pants and indicated that Officer Acevedo used force to remove him from the holding cell when he would not comply. In his telephone statement, § 87(2)(b) claimed that Officer Acevedo told him, “Shut the fuck up. You’re going through the system and your fucking kids is [sic] going through the system with you.” When § 87(2)(b) protested, Officer Acevedo replied, “Shut up, you little bitch.” § 87(2)(b) indicated that four unidentified officers were present in the cell.

§ 87(2)(b) later pleaded guilty to violating an order of protection and received time served with a continuation of the order of protection. When § 87(2)(b) filed his complaint, he indicated that his children were in the custody of the Administration for Children’s Services (ACS) and that he was involved in a battle to regain custody of his children. At the time of his sworn statement, § 87(2)(b) stated that ACS had since returned the children.

The arrest photograph taken at the time of § 87(2)(b) arrest depicts a black male with no apparent signs of injury (encl. 5H).

Results of Investigation

Witness Statements

In his sworn statement, § 87(2)(b) claimed that there were numerous prisoners in the holding cell that witnessed Officer Acevedo use force against him. In an attempt to identify male prisoners that were present in the holding cells of the 52nd Precinct stationhouse with § 87(2)(b) and possibly witnessed the physical force that he alleged, the undersigned investigator queried the Booking Arraignment Disposition Inquiry System for males arrested around the time of § 87(2)(b). Please Call letters were mailed to the ten males identified by the database on March 10, 2007 (encl. 25B) and the following two witnesses responded.

§ 87(2)(b) Jr. provided a brief statement via telephone on March 12, 2007 (encl. 6). The undersigned investigator asked § 87(2)(b) whether he observed an incident on January 17, 2007 at the 52nd Precinct stationhouse where officers had difficulty taking someone to be fingerprinted or used physical force against an arrested individual. § 87(2)(b) denied that he witnessed any such incident.

§ 87(2)(b) provided a brief in-person statement at the CCRB on March 20, 2007 (encl. 7). The undersigned investigator showed § 87(2)(b) the arrest photograph of § 87(2)(b) and asked him if he witnessed any incident at the 52nd Precinct stationhouse in which officers used physical force against § 87(2)(b). § 87(2)(b) said that he did not.

Witnesses Not Interviewed

The BADS database indicated that there were ten males—identified as § 87(2)(b) and § 87(2)(b) arrested at approximately the same time as § 87(2)(b) and were likely present in the holding pen with him. Please Call letters were mailed to these individuals on March 10, 2007 (encl. 25B). The letters mailed to § 87(2)(b) and § 87(2)(b) were returned by the United States Postal Service with notations indicating that the addresses were invalid (encl. 25C). On March 15, 2007, the father of § 87(2)(b) responded to the letter and indicated that he would have § 87(2)(b) contact the undersigned investigator; however § 87(2)(b) never provided a statement in connection with the investigation. Nonetheless, the absence of corroborative accounts in the statements of the above-listed independent witnesses suggests that no additional witness statements are necessary for the investigation to reach a finding on the allegations.

§ 87(2)(b) The undersigned investigator attempted to contact § 87(2)(b) the common-law spouse of § 87(2)(b) in an attempt to corroborate § 87(2)(b) account of events. However, the undersigned investigator

was unable to obtain a telephone number for § 87(2)(b) from police documentation or the Coles directory (encl. 24J, 25G).

Police Officer Statements

Officer Jose Diaz, of the 52nd Precinct (Subject Officer)

Officer Jose Diaz, a § 87(2)(b) has been a member of the New York City Police Department for seven years. Officer Diaz had one entry in his memo book indicating that on January 17, 2007, at 4:34 p.m., § 87(2)(b) was placed under arrest at § 87(2)(b) (encl. 8).

Officer Diaz was interviewed at the Civilian Complaint Review Board on April 5, 2007 (encl. 9A-9C). On January 17, 2007, Officer Diaz worked as the Domestic Violence Officer with Officer Erick Acevedo from 11:30 a.m. to 8:05 p.m. Officer Diaz was dressed in uniform.

On January 17, 2007, at approximately 4:34 p.m., Officer Diaz and Officer Acevedo were performing the duties of the Domestic Violence Unit, which entails conducting visits to cases placed on the high propensity list of domestic violence victims that were in danger of becoming victims again. The officers went to § 87(2)(b) to visit § 87(2)(b) the common-law spouse of § 87(2)(b) who was on the list. Officer Diaz noted that § 87(2)(b) had been arrested a month prior for § 87(2)(b). As the officers knocked on the door, they heard children crying inside of the apartment. A male, later identified as § 87(2)(b) responded to the knock and the officers identified themselves and the reason for their visit. § 87(2)(b) refused to open the door to allow the officers entry into the apartment. As the officers spoke with § 87(2)(b) they realized who he was. Because the officers had spoken with the Bronx District Attorney regarding the case, they were aware that an order of protection had been issued barring § 87(2)(b) from the location. Therefore, by being present in the apartment, § 87(2)(b) was in violation of this order of protection.

Officer Diaz denied that he ever drew or pointed his gun and further denied that Officer Acevedo ever drew or pointed his gun. Officer Diaz denied that Officer Acevedo ever said anything to the effect of, "If you don't open the door, we're gonna shoot you through the door." The officers were outside of the door for approximately ten minutes. He noted that the children were crying throughout this time.

Officer Diaz stated that he and Officer Acevedo feared for the safety of the children and § 87(2)(b) as they had previously been victims of domestic violence at the hands of § 87(2)(b). The officers requested that a supervisor respond to the location. They also requested that the Emergency Services Unit respond to the location so that the officers could gain entry to the location to ensure that everyone inside of the apartment was safe. Sergeant Philip Hernandez arrived. Officer Diaz indicated that he and Officer Acevedo made continual efforts to force the door open. Officer Diaz denied that the officers ever used their nightsticks to bang on the door and indicated that the officers only used their hands. The officers were ultimately able to put enough force against the door to cause it to open. Officer Diaz denied that there was any damage to the door and noted that the door was still able to close after the incident. § 87(2)(b) was placed under arrest.

Officer Diaz and Officer Acevedo transported § 87(2)(b) to the 52nd Precinct stationhouse. § 87(2)(b) was yelling and screaming throughout the transport because he did not know why the officers had come to the location. Officer Diaz indicated that § 87(2)(b) used profanity but was unable to specify what was said. He denied that § 87(2)(b) ever requested their names or shield numbers and indicated that § 87(2)(b) already knew this information from his last arrest. Officer Diaz denied that Officer Acevedo had a conversation with § 87(2)(b) regarding the use of force and specifically denied that Officer Acevedo told § 87(2)(b) that he would have shot him.

At the 52nd Precinct stationhouse, Officer Diaz and Officer Acevedo obtained § 87(2)(b) pedigree information and then removed him to a bathroom to conduct a search. Officer Diaz did not recall whether § 87(2)(b) was yelling during this time. Officer Diaz denied that either he or Officer Acevedo used physical force against § 87(2)(b) or that Officer Acevedo ever pushed § 87(2)(b) into a wall or placed him

in a chokehold or any maneuver that restricted his breathing. Officer Diaz further denied that Officer Acevedo ever informed § 87(2)(b) that he intended to use force against him and specifically denied that § 87(2)(b) said anything to the effect of, "Don't make me beat you with the handcuffs."

Officer Diaz believed that he fingerprinted § 87(2)(b). He had no recollection that § 87(2)(b) made any complaints and denied that there was any difficulty in this process. Officer Diaz noted that there were several officers in the vicinity processing arrests as he fingerprinted § 87(2)(b) but was unable to identify these officers. Officer Diaz had no recollection that Officer Acevedo was present when he fingerprinted § 87(2)(b). He denied that he observed Officer Acevedo use physical force against § 87(2)(b) when he was in the cell area and further denied that he observed Officer Acevedo use one hand to choke § 87(2)(b) or bend his hand behind his back. Officer Diaz also denied that he or Officer Acevedo made any discourteous statements while speaking with § 87(2)(b).

Officer Erick Acevedo, of the 52nd Precinct (Subject Officer)

Officer Erick Acevedo, a § 87(2)(b), has been a member of the NYPD for fourteen years. Officer Acevedo's memo book contained one entry indicating that on January 17, 2007, at 4:34 p.m., § 87(2)(b) was arrested at § 87(2)(b) (encl. 10). Next to this entry is a notation regarding the High Propensity list.

Officer Acevedo completed Complaint Report § 87(2)(b) (encl. 11A-11C) and Arrest Report § 87(2)(b) (encl. 12A-12B) regarding the arrest of § 87(2)(b). In the complaint report Officer Acevedo wrote the following narrative: "At [time and place of occurrence], [arresting officer] while assigned to the Domestic Violence Unit did attempt a home visit at victim's residence who is on High Propensity list. During visit, arresting officer did encounter § 87(2)(b) who was in direct violation of a valid order of protection and who [the arresting officer] had previously arrested. Perpetrator refused to open apartment door and barricaded himself and his six children causing and forcing police to gain entry, fearing for the safety and well being of victim and children. Upon entry, perpetrator did run to rear room/kitchen in order to flee from arresting officer. Perpetrator's children were put in substantial risk of danger during incident and the effect of the arrest." § 87(2)(b) was charged with six counts of reckless endangerment in the first degree, seven counts of criminal contempt in the first degree, obstructing governmental administration in the second degree, resisting arrest and six counts of endangering the welfare of a child. The arrest report indicates that § 87(2)(b) was in violation of Supreme Court order of protection related to Docket § 87(2)(b) set to expire on December 17, 2008.

Officer Acevedo was interviewed at the CCRB on April 5, 2007 (encl. 13A-13C). On January 17, 2007, Officer Acevedo worked in uniform as the Domestic Violence Officer with Officer Diaz from 11:30 a.m. to 8:05 p.m. Officer Acevedo's statement was identical to that of Officer Diaz, as summarized above, with the following exceptions.

On January 17, 2007, at approximately 4:34 p.m., Officer Acevedo and Officer Diaz went to § 87(2)(b) to visit an individual that was on the Domestic Violence High Propensity list. However, when the officers asked § 87(2)(b) for § 87(2)(b) and asked to enter the apartment, § 87(2)(b) refused to allow them to enter because he knew that they would arrest him. Officer Diaz stated that he called for a supervisor and for the Emergency Services Unit and then waited approximately ten minutes. During this time, he and Officer Acevedo attempted to gain entry to the apartment by pushing and kicking the door as well as striking the door with their nightsticks. Officer Acevedo affirmed that the apartment door was damaged as a result, specifically that there was a small dent in the upper part of the door. Officer Acevedo stated that he did not recall whether he drew his gun while attempting to gain entry into the apartment. He denied that he pointed his gun at § 87(2)(b) through the apartment door or that he ever told § 87(2)(b) that he would shoot him if he did not open the door. Once Sergeant Hernandez, who was accompanied by Officer Aniello Mazzella, arrived at the location, the officers succeeded in pushing and kicking the door open. § 87(2)(b) was apprehended after a minor struggle.

Officer Acevedo and Officer Diaz transported § 87(2)(b) to the 52nd Precinct stationhouse in a drive that Officer Acevedo described as unremarkable. He described § 87(2)(b) as "irate" but indicated that § 87(2)(b)

§ 87(2) admitted that he knew it was wrong to be at the apartment. Officer Acevedo denied that he made any statement indicating that he would have shot § 87(2)(b).

Officer Acevedo denied that § 87(2)(b) was ever loud while inside of the 52nd Precinct stationhouse. Officer Acevedo denied that he ever needed to use physical force against § 87(2)(b) that he ever choked § 87(2)(b) otherwise placed him in a maneuver that restricted his breathing. He also denied that he made any statement to § 87(2)(b) indicating that he would beat him with the handcuffs. Officer Diaz believed that Officer Diaz obtained § 87(2)(b) fingerprints and never learned that there was any difficulty with this process. Officer Acevedo denied that he used one hand to choke § 87(2)(b) or that he bent § 87(2)(b) hand behind his back. He also denied that he spoke discourteously to § 87(2)(b) or ever referred to § 87(2)(b) as a “bitch.” He noted that during the arrest processing § 87(2)(b) told him, “You’re gonna make me lose my children” and apologized to him.

Sergeant Philip Hernandez, of the 52nd Precinct (Witness Officer)

Sergeant Philip Hernandez, a § 87(2)(b), has been a member of the NYPD for twelve years. Sergeant Hernandez had no entries in his memo book regarding this incident.

Sergeant Hernandez was interviewed at the CCRB on May 25, 2007 (encl. 15A-15B). On January 17, 2007, Sergeant Hernandez was assigned to the Anti-Crime unit and worked in plainclothes from 9:26 a.m. to 6:12 p.m. with Officer Aniello Mazzella.

On January 17, 2007, at approximately 4:34 p.m., Sergeant Hernandez received a radio report indicating that the Domestic Violence Officers had a barricaded individual at § 87(2)(b). Because Sergeant Hernandez was in the immediate vicinity, he and Officer Mazzella responded to the location. As Sergeant Hernandez stood outside of the apartment, Officer Acevedo and Officer Diaz knocked on the door with their hands and kicked the door with their feet. Sergeant Hernandez stated that he never saw the officers strike the door with their nightsticks and denied observing any damage to the door. Sergeant Hernandez recalled that there were children inside of the apartment but did not recall whether he could hear the children as he stood outside. After approximately five minutes, the officers gained access to the apartment, though Sergeant Hernandez was unable to specify how. Sergeant Hernandez entered the apartment and checked the rooms to confirm that there were no injured or otherwise harmed individuals inside. The Domestic Violence supervisor, Sergeant Gary Franklin, arrived at the apartment shortly thereafter and so Sergeant Hernandez and Officer Mazzella resumed patrol.

Sergeant Jason Liles, of the 52nd Precinct (Witness Officer)

Sergeant Jason Liles, a § 87(2)(b), has been a member of the NYPD for ten years. Sergeant Liles had no entries in his memo book regarding this incident. Sergeant Liles was interviewed at the CCRB on April 25, 2007 (encl. 14A-14B). On January 17, 2007, Sergeant Liles worked in uniform from 2:50 p.m. to 11:47 p.m. as the 52nd Precinct Desk Sergeant.

Sergeant Liles had no independent recollection of the incident or anything that occurred on the date of incident. The undersigned investigator showed Sergeant Liles the arrest photograph of § 87(2)(b) and provided him with details of the incident but Sergeant Liles was still unable to recall any interaction with § 87(2)(b). Sergeant Liles affirmed that there was a closed circuit camera at the desk that allowed him to view the holding cell area. However, Sergeant Liles had no recollection of an incident in which a prisoner was refusing to exit the cell to be fingerprinted.

Medical Records

On January 18, 2007, medical personnel at Bronx Central Booking completed a Pre-Arrest Screening Form when § 87(2)(b) was transferred into the custody of the New York City Department of Correction (encl. 16A-16B). The form indicates that § 87(2)(b) informed medical personnel that he was neither sick nor injured. No signs of any medical problems were observed.

On § 87(2)(b) 2(b) was again examined when he arrived at the § 87(2)(b) (encl. 17A-17B). § 87(2)(b) was described as a general young man in no distress and an examination of his head, eyes, ears, neck and throat yielded normal results.

Police Documents

Sprint Communications Recordings

Sprint communications recordings indicate that on January 17, 2007, three calls were made to 911 in regards to the incident at § 87(2)(b) (encl. 18A-18F). Sprint § 87(2)(b) indicates that at 4:34 p.m., a male caller—identified via investigation as § 87(2)(b) informed the operator that there were two police officers trying to break down his door and noted that the officers were scaring his children. § 87(2)(b) requested that a sergeant respond to the location before the call was abruptly disconnected. § 87(2)(b) called back and reiterated the same information. When the operator attempted to obtain § 87(2)(b) name, an unidentified male voice shouted twice, “Put the phone down!” The call was then disconnected. In Sprint § 87(2)(b) on January 17, 2007, at 4:34 p.m., an unidentified caller reported that there was a domestic dispute at § 87(2)(b) in § 87(2)(b) and noted that this was not the first incidence of domestic violence at the location.

Recordings of police communications indicate that at 4:17 p.m., the 52nd Precinct Domestic Violence Unit reported that a perpetrator was barricaded in the apartment with his children. Twelve minutes later, the Domestic Violence Unit requested that a supervisor and the Emergency Services Unit (ESU) respond to the location. Shortly thereafter, the 52nd Precinct Anti-Crime Sergeant—identified via investigation as Sergeant Hernandez—indicated that he would respond to the location. Additional units noted that they had responded to the location. At approximately 4:37 p.m., the Domestic Violence Unit informed Central Communications that ESU was no longer required at the location because they had gained entry to the location. Shortly thereafter, the Commanding Officer of the 52nd Precinct confirmed that entry had been gained. Central communications then gave the Domestic Violence Unit an arrest time of 4:32 p.m.

52nd Precinct Command Log

The 52nd Precinct Command Log contained one entry regarding the arrest of § 87(2)(b) in which § 87(2)(b) condition was listed as apparently normal (encl. 19).

52nd Precinct Prisoner Holding Pen Roster

The 52nd Precinct Holding Pen Roster for January 17, 2007 indicates that § 87(2)(b) was placed inside of the holding pen at 4:40 p.m. and was removed on January 18, 2007 at 3:30 a.m. for transport to Bronx Central Booking (encl. 20). Present in the holding pen between January 17, 2007 at 6:00 p.m. and January 18, 2007 at 3:30 a.m. were the following individuals: § 87(2)(b) and § 87(2)(b). The provided page of the roster only includes one individual arrested after § 87(2)(b).

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civil Court Case

The New York City Comptroller's Office indicated that as of June 6, 2007, § 87(2)(b) had not filed a Notice of Claim in regards to this incident.

CCRB Histories

§ 87(2)(b) has filed one prior complaint with the Civilian Complaint Review Board (encl. 22D). In CCRB case 200700086, § 87(2)(b) indicated that on December 6, 2006, he was arrested by Officer Acevedo and Officer Diaz for rape in the first degree, assault in the second degree and imprisonment. In this incident § 87(2)(b) alleged that Officer Diaz took him to a bathroom inside of the 52nd Precinct stationhouse and choked him and threatened him with the use of force. Case 200700086 was closed and § 87(2)(b) allegations of physical force and abuse of authority were unfounded based on his inconsistent statements.

During his fourteen-year tenure with the New York Police Department, Officer Erick Acevedo was substantiated by the CCRB for three allegations of misconduct that resulted in the imposition of penalty (encl. 2A-2B). Officer Acevedo had substantiated allegations of force, threat of force, and failure to prepare a stop and frisk report in connection with CCRB case number 200100862. Officer Acevedo received charges as a result of the substantiations. Officer Jose Diaz has no substantiated CCRB allegations in his six year tenure with the New York Police Department (encl. 2C).

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) claimed that Officer Acevedo and Officer Diaz were the officers that initially came to § 87(2)(b) in the Bronx and explained that he knew these officers' names from a prior incident on December 6, 2006 in which the officers arrested him. Officer Erick Acevedo and Officer Jose Diaz affirmed that they were the officers that arrested § 87(2)(b) on December 6, 2006 and also affirmed that they were the officers that initially interacted with § 87(2)(b) on January 17, 2007. § 87(2)(b) alleged that Officer Acevedo pointed his gun at him through a door (Allegation A) and threatened to shoot him (Allegation B). § 87(2)(b) claimed that Officer Acevedo forcibly entered the apartment, causing damage to the door (Allegation C and Allegation D). § 87(2)(b) also claimed that while en route to the 52nd Precinct stationhouse, Officer Acevedo threatened to shoot him (Allegation E). § 87(2)(b) alleged that while in a bathroom inside of the 52nd Precinct stationhouse, Officer Acevedo used force against him (Allegation F) and threatened him with the use of force (Allegation G). § 87(2)(b) further alleged that while in the cell area of the stationhouse, Officer Acevedo used physical force against him (Allegation H) and spoke discourteously to him (Allegation I). Although the officers did not confirm § 87(2)(b) account regarding their actions, the identity of the subjects of his allegations is evident due to § 87(2)(b) extensive interactions with the officers. Therefore, Allegation A, Allegation B, Allegation C, Allegation E, Allegation F, Allegation G, Allegation H and Allegation I have been pleaded against Officer Acevedo. Allegation D has likewise been pleaded against Officer Diaz.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation A) Force: At § 87(2)(b) in the Bronx, Officer Erick Acevedo pointed his gun at § 87(2)(b).

Allegation B) Abuse of Authority: At § 87(2)(b) in the Bronx, Officer Erick Acevedo threatened § 87(2)(b) with the use of force.

Allegation E) Abuse of Authority: En route to the 52nd Precinct stationhouse, Officer Erick Acevedo threatened § 87(2)(b) with the use of force.

Allegation G) Abuse of Authority: At the 52nd Precinct stationhouse, Officer Erick Acevedo threatened § 87(2)(b) with the use of force.

Allegation I) Discourtesy: At the 52nd Precinct stationhouse, Officer Erick Acevedo spoke obscenely and/or rudely to § 87(2)(b).

§ 87(2)(b) made numerous allegations against Officer Acevedo, claiming that Officer Acevedo pointed a gun at him through the door of § 87(2)(b) (Allegation A), and also threatened to shoot him at § 87(2)(b) (Allegation B) and while en route to the 52nd Precinct stationhouse (Allegation E). § 87(2)(b) also alleged that while at the 52nd Precinct stationhouse, Officer Acevedo threatened to beat him with handcuffs (Allegation G) and called him a “bitch” (Allegation I). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation C) Abuse of Authority: Officer Erick Acevedo entered and searched § 87(2)(b) in the Bronx.

Allegation D) Abuse of Authority: Officer Jose Diaz entered and searched § 87(2)(b) in the Bronx.

It is agreed that Officer Acevedo and Officer Diaz forcibly entered § 87(2)(b) causing damage to the apartment door. While conducting a routine visit to the home of § 87(2)(b) § 87(2)(b) Officer Acevedo and Officer Diaz encountered § 87(2)(b). Both officers stated that they entered because they feared for the safety of § 87(2)(b) who had been the § 87(2)(b).

Officer Acevedo and Officer Diaz explained that they were aware of the details of the case and the order of protection because they had arrested § 87(2)(b) on a prior occasion and had spoken with the Bronx District Attorney about the case. The officers also noted that they could hear children crying inside of the apartment and also feared for their safety. Barry Kamins' *New York Search and Seizure* outlines several circumstances that would allow an officer to enter and search a location in the absence of a search warrant (encl. 1A-1C). The emergency doctrine allows permits officers to "enter premises without a warrant to protect individuals in distress, to assist victims of crimes that have just occurred, or to investigate suspicious signs of impending danger." The Court of Appeals defined three guidelines for this doctrine: "the police must have reasonable grounds to believe that there is an emergency at hand and that there is an emergency at hand and that there is an immediate need for their assistance for the protection of life or property, the search must not primarily be motivated by an intent to arrest and seize evidence" and thirdly, there must be some reasonable basis to associate the emergency with the area or property to be searched." § 87(2)(g)

Allegation F) Force: At the 52nd Precinct stationhouse, Officer Erick Acevedo used physical force against § 87(2)(b)

Allegation H) Force: At the 52nd Precinct stationhouse, Officer Erick Acevedo used physical force against § 87(2)(b)

§ 87(2)(b) alleged that Officer Acevedo used physical force against him in the bathroom of the 52nd Precinct stationhouse, specifically that Officer Acevedo pushed him against a wall and used one hand against his to choke him (Allegation F). § 87(2)(b) also alleged that when he was in the cell area of the stationhouse, Officer Acevedo used one hand to choke him and bent his left hand towards his shoulder (Allegation H). § 87(2)(b) did not allege in his sworn statement that these actions restricted his breathing.

§ 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: